

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1045

United States of America,	*	
	*	
Plaintiff-Appellee,	*	
v.	*	Appeal from the United States
	*	District Court for the
Angelia M. Orth,	*	District of Nebraska.
	*	
Defendant-Appellant.	*	[UNPUBLISHED]

Submitted: July 22, 2004
Filed: August 12, 2004

Before MELLOY, LAY, and COLLOTON, Circuit Judges.

PER CURIAM.

The Defendant challenges the district court's denial of her motion for a downward departure. See United States Sentencing Commission, Guidelines Manual, § 5K2.0 (Nov. 2002). The Defendant, by and through her counsel, raised several mitigating circumstances to her sentence, but the trial judge found that these circumstances did not warrant a downward departure. On appeal, her counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967).

This court has reviewed the record of the district court in accordance with Penson v. Ohio, 488 U.S. 75 (1988), and finds no nonfrivolous issues. The district court's informed decision not to depart is not reviewable. See e.g., United States v. Turechek, 138 F.3d 1226, 1228 (8th Cir. 1998). The district court's decision is affirmed. See 8th Cir. R. 47B.

We also grant defense counsel's motion to withdraw. Counsel is reminded of the obligations under Part V of this Court's Amended Criminal Justice Act Plan. Specifically, counsel is to advise the defendant of the right to file a petition for writ of certiorari in the Supreme Court of the United States, and to inform the defendant as to the merits and likelihood of success in the filing of such a petition. If counsel determines there are meritorious issues, defense counsel shall assist the defendant in filing a petition for writ of certiorari. If counsel determines there are no meritorious issues warranting the filing of a petition for writ of certiorari, counsel shall advise the defendant of the procedures for filing a petition pro se, and the time limits for the filing of such a petition. Counsel shall file a certification with the clerk within 30 days certifying that he has complied with his obligations under Part V.
